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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

CELIA R., Petitioner, v. THE SUPERIOR COURT OF THE COUNTY OF SAN BERNARDINO, Respondent; SAN BERNARDINO COUNTY DEPARTMENT OF CHILDREN'S SERVICES, Real Party in Interest.	E039912 (Super.Ct.Nos. J-205351 & J-205352) OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. David S. Cohn, Judge. Petition denied.

Gloria Kim-Chung for Petitioner.

No appearance for Respondent.

Ronald D. Reitz, County Counsel, and Dawn Stafford, Deputy County Counsel, for Real Party in Interest.

1. Introduction

In this petition for extraordinary writ under California Rules of Court, rule 38.1, Celia R. (mother) challenges the juvenile court's order denying her reunification services and setting the Welfare and Institutions Code section 366.26 hearing.[1] Mother claims that the trial court erred in finding that she was not entitled to reunification services under section 361.5, subdivisions (b)(10), (11), and (13). Because the record reveals substantial evidence to support the court's findings, we deny mother's petition.

2. Factual and Procedural History

In early December of 2005, mother gave birth to twins Jeanna R. and Michael R. Both tested positive for methamphetamine. Mother admitted using methamphetamine the day before the children's births.

Mother had numerous prior contacts with the San Bernardino County Department of Children's Services (DCS) as a result of her drug use and her neglect of her children. Mother had three other children, a daughter born in 2000, a son born in 2002, and another daughter born in 2004. All three children tested positive for marijuana or methamphetamine at birth. Mother also cared for the children's half-sister. In 2002, DCS offered voluntary family maintenance services, but mother declined the services. In 2003, based on allegations of neglect, mother's eldest daughter was removed and DCS again offered referrals

[1] All further statutory references will be to the Welfare and Institutions Code unless otherwise stated.

for services. The eldest daughter subsequently was placed in the legal custody of her maternal grandmother. In 2004, DCS removed the other children from parental custody. Mother failed to complete her reunification plan and failed to comply with her drug tests. The juvenile court terminated parental rights as to mother's two remaining children.

On December 12, 2005, DCS filed a dependency petition under section 300, subdivisions (b) and (j). The petition included the following allegations: both Jeanna and Michael tested positive for drugs at birth; mother's past and present drug use impairs her ability to parent her children; mother has two other children who have suffered severe neglect and have been removed because of her drug use.

At the jurisdictional hearing on February 10, 2006, the juvenile court found the allegations in the petition true. At the close of the dispositional hearing on February 24, 2006, the court denied mother reunification services under section 361.5, subdivision (b)(10), (11), and (13).

The court then scheduled the selection and implementation hearing under section 366.26.

3. Discussion

Mother claims that the juvenile court erred in denying reunification services under section 361.5, subdivision (b), subsections (10), (11), and (13). Mother acknowledges her chronic drug problem. She also acknowledges that she failed to reunify with the children's older siblings and that her parental rights had been

terminated. Mother challenges only the court's finding that she has failed to make reasonable efforts to resolve the problems leading to the children's removal.

Section 361.5, subdivision (b), lists the extraordinary circumstances that justify the denial of reunification services. (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 753.) Despite the importance of reunification services in the dependency system, the Legislature has carved out exceptions where it would be fruitless to provide additional services because of the high risk of recidivism. (*In re Joshua M.* (1998) 66 Cal.App.4th 458, 467; *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) Section 361.5, subdivision (b) specifically provides:

"(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

"[¶] . . . [¶]

"(10) That the court ordered termination of reunification services for any siblings or half-siblings of the child because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent or guardian.

"(11) That the parental rights of a parent over any sibling or half-sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from the parent.

"[¶] . . . [¶]

"(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible."

We must affirm the court's finding under section 361.5 if supported by substantial evidence. (*In re Harmony* (2005) 125 Cal.App.4th 831, 839.)

As to the exceptions set forth in section 361.5, subdivision(b)(10) and (11), although mother participated in an drug-treatment program, the juvenile court reasonably found that mother's current efforts were inadequate to address her chronic drug problem. "The law does not require the performance of idle acts. [Citation.] And where substantial but unsuccessful efforts have just been made to address a parent's thoroughly entrenched drug problem in a juvenile dependency case involving one child, and the parent has shown no desire to change,

duplicating those efforts in a second case involving another child-but the same parent-would be *nothing* but an idle act." (*Letitia v. Superior Court* (2000) 81 Cal.App.4th 1009, 1016 (fn. omitted); see also *In re Joshua M.* (1998) 66 Cal.App.4th 458, 467.)

In this case, mother began using marijuana at age 16 and methamphetamine at age 20, after the birth of her first child. DCS offered mother family maintenance services in 2002. DCS provided mother referrals for services in 2003. In 2004, mother was under a court-ordered treatment plan. Despite these repeated efforts, mother has failed to complete a drug-treatment program. Instead of resolving her drug problem, mother continued to use drugs and her children have suffered the consequences. All five children tested positive for marijuana or methamphetamine at birth.

A parent's efforts to resolve the problem leading to a child's removal cannot be deemed reasonable unless there is evidence to show that the parent's efforts have made some positive impact in the treatment of the initial problem. When the record contains evidence that the parent has relapsed, such evidence undermines the reasonableness of the parent's efforts. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 76.) Based on mother's prior treatment and relapse, the court had no obligation to provide additional services.

As to the exception under section 361.5, subdivision (b)(13), contrary to mother's claim that she has not actively resisted drug treatment, mother's relapses into drug use provide ample evidence of resistance. "Resistance to prior treatment

for chronic use of drugs may be shown where the parent has participated in a substance abuse treatment program but continues to abuse illicit drugs. [Citation.]" (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 382; see also *Karen H. v. Superior Court* (2001) 91 Cal.App.4th 501, 505.)

Mother admitted that she used drugs the day before giving birth to the twins. When asked about using drugs during pregnancy, mother responded, "[i]t was a little, just a little, like, hardly anything, but I know it's still considered using." Despite her prior participation in a drug treatment program, mother continued to use drugs. Mother also failed to appreciate the seriousness of her drug use and the harm it causes to her children. Because of mother's drug use and neglect, the children have suffered from various physical and developmental problems. Mother's three-year-old son could not walk or stand when he was about two years old. The muscles in his legs had atrophied. Mother's one-year-old daughter had severe breathing problems during the first year of her life. The newborn twins were too young and weak to assess the damage caused by mother's drug use.

The court's finding under any one of the exceptions would have been sufficient to justify a denial of reunification services. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.) The record supports the court's findings under all three exceptions. The court properly denied services under section 361.5.

5. Disposition

We deny mother's petition.

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s/Gaut
J.

We concur:

s/Ramirez
P. J.

s/Richli
J.